

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

ROSS, BROVINS & OEHMKE, P.C.
d/b/a LAWMODE
a Michigan corporation,

Plaintiff,

vs.

Case No. 03-74474
Honorable Nancy G. Edmunds
(Magistrate Judge Steven D. Pepe)

LEXIS/NEXIS, a Division of Reed Elsevier
Group, PLC, a British Corporation, and owner
of Matthew Bender & Co., Inc., a New York
corporation, d/b/a Capsoft Development
Corporation,

Defendant.

**LEXISNEXIS'S AMENDED ANSWER AND AFFIRMATIVE DEFENSES
TO THE FIRST AMENDED COMPLAINT**

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- and -

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Attorneys for Defendant

Defendant LexisNexis, a division of Reed Elsevier, Inc. (“LexisNexis”) by its undersigned attorneys Butzel Long and Proskauer Rose LLP, for its Amended Answer and Affirmative Defenses to the First Amended Complaint filed by Plaintiff LawMode, hereby responds to each numbered paragraph as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1.

2. Defendant denies the allegations in paragraph 2.

3. Defendant denies the allegations in subparagraph 2.a.

4. Defendant admits the allegations in subparagraph 2.b.

5. The allegations in paragraph 3 state legal conclusions as to which no answer is required.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 4.

7. Defendant denies the allegations in paragraph 5, except admits that HotDocs® is a computer software application owned by Matthew Bender & Co., Inc., and at certain times, Matthew Bender & Co., Inc. had a Content Development Agreement with LawMode allowing LawMode to use HotDocs® to automate the generation of certain legal forms.

8. Defendant denies the allegations in paragraph 6, except admits that the last release of any product that contained LawMode’s work was entitled *LexisNexis™ Automated Michigan Forms* (2543 Release August 2001 ISBN 82054-32-84).

9. Defendant denies the allegations in paragraph 7.

10. Defendant denies the allegations in paragraph 8, except admits that prior to Capsoft Development Corporation's ("Capsoft") agreement with LawMode, Capsoft had developed and sold automated legal forms for the state of California.

11. Defendant denies the allegations in paragraph 9.

12. Defendant denies the allegations in paragraph 10.

13. Defendant denies the allegations in paragraph 11.

14. Defendant denies the allegations in paragraph 12.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13.

16. Defendant denies the allegations in paragraph 14 and each of its subparagraphs.

17. Defendant states that that the allegations in paragraph 15 were pertinent only to claims that have been dismissed, and therefore no response is required.

18. Defendant states that that the allegations in paragraph 16 were pertinent only to claims that have been dismissed, and therefore no response is required.

19. Defendant states that that the allegations in paragraph 17 were pertinent only to claims that have been dismissed, and therefore no response is required.

20. Defendant states that that the allegations in paragraph 18 were pertinent only to claims that have been dismissed, and therefore no response is required.

21. Defendant denies the allegations in paragraph 19, and respectfully refers the Court to the November 2, 2001 termination letter for a full statement of its contents.

22. Defendant denies the allegations in paragraph 20, except admits that Matthew Bender & Co., Inc. released a product, entitled *LexisNexis TM Automated Michigan SCAO*

Forms (2584 Release ISBN 82055-44-48) in or about July 2002 and another product, entitled *LexisNexis TM Automated Forms* (2584 Release ISBN 82055-44-48), in or about April 2003.

23. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21.

24. Defendant states that that the allegations in paragraph 22 were pertinent only to claims that have been dismissed, and therefore no response is required.

COUNT I

Defendant repeats its answers to paragraphs 1-22 above as if fully set forth herein.

25. Defendant denies the allegations in paragraph 23.

- a. Defendant denies the allegations in subparagraph 23.a.
- b. The allegations in subparagraph 23.b. were dismissed and no response is required.
- c. Defendant denies the allegations in subparagraph 23.c.
- d. The allegations in subparagraph 23.d. were dismissed and no response is required.

26. Defendant denies the allegations in paragraph 24.

- a. Defendant denies the allegations in subparagraph 24.a.
- b. The allegations in subparagraph 24.b. were dismissed and no response is required.
- c. The allegations in subparagraph 24.b. were dismissed and no response is required.

27. Defendant denies the allegations in paragraph 25.

- a. Defendant denies the allegations in subparagraph 25.a.

- b. The allegations in subparagraph 25.b. were dismissed and no response is required.

28. Defendant denies the allegations in paragraph 26.

- a. The allegations in subparagraph 26.a. were dismissed and no response is required.
- b. Defendant denies the allegations in subparagraph 26.b., except admits that Matthew Bender & Co., Inc. sold a certain number of copies of a product containing LawMode work after the termination of the parties' agreement, and states that LawMode was fully compensated for those sales.

COUNT II

29. Count II was dismissed and no response to the allegations in paragraphs 27-29 is required.

COUNT III

30. Count III was dismissed and no response to the allegations in paragraphs 30-38 is required.

COUNT IV

31. Count IV was dismissed and no response to the allegations in paragraphs 39-56 is required.

DEFENSES

- 1. The First Amended Complaint fails in whole or in part to state a claim for relief.
- 2. The claims remaining in the First Amended Complaint and the relief sought therein are barred, in whole or in part, because Plaintiff has failed to mitigate damages, if any.

3. The claims remaining in the First Amended Complaint and the relief sought therein are barred by the doctrines of laches, waiver, estoppel, and other applicable equitable doctrines.

4. The claims remaining in the First Amended Complaint and the relief sought therein are barred, in part, by the doctrine of accord and satisfaction.

5. The claims remaining in the First Amended Complaint and the relief sought therein are barred, in whole or in part, by the applicable statute of limitations.

6. Defendant reserves the right to assert additional defenses that it learns of through discovery or other investigation.

September 14, 2007

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all ECF participants.

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